

AMENDED IN SENATE MAY 7, 2013
AMENDED IN SENATE APRIL 23, 2013
AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 777

Introduced by Senator Calderon

February 22, 2013

An act to ~~add Section 13084 to the Government Code, to amend Sections 12556, 12726, 25147.7, and 25205.3 of, to add Sections 12599.5 and 12635.5 to, and to add Chapter 3.5 (commencing with Section 12559) to Part 2 of Division 11 of, the Health and Safety Code, and to amend Section 15301 of the Vehicle Code, relating to public safety, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 777, as amended, Calderon. Public safety: fireworks.

Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6, annually, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance. Existing law requires various entities, including the State Fire Marshal, to seize certain prohibited fireworks. Existing law requires an authority that seizes fireworks to notify the State Fire Marshal of the seizure and provide specified information. Existing law requires the State Fire Marshal to dispose of the fireworks and requires dangerous fireworks to be disposed of according to specified procedures. Existing law requires the State Fire Marshal to acquire and use statewide mobile dangerous fireworks destruction units to collect and destroy dangerous fireworks from local and state agencies.

This bill would require the State Fire Marshal, by January 1, 2015, to establish and have operational regional collection centers for the purpose of receiving seized safe and sane and federally approved fireworks. The bill would authorize the State Fire Marshal to permit a state licensed fireworks importer and exporter or wholesaler to purchase any fireworks the State Fire Marshal and a recognized 3rd party testing entity, as defined, deems to be commercially viable. *The bill would require revenue generated from the sale of fireworks seized by a local authority to be allocated by the State Fire Marshal to the seizing local authority pursuant to an agreement, as provided, thereby making an appropriation.* The bill would require the fireworks stored at the regional collection facility to be subject to certain requirements, including that they be stored for a period of not more than 90 days.

This bill would authorize, beginning January 1, 2015, the sale of certified safe and sane fireworks from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year pursuant to a license issued by the State Fire Marshal, if authorized by a charter city, city, county, fire protection district, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.

The bill would also authorize a charter city, city, county, fire protection district, or city and county that adopts an ordinance or resolution authorizing the sale of safe and sane fireworks to require each applicant receiving a permit to pay a fee to the charter city, city, county, fire protection district, or city and county of a pro rata portion of the actual and reasonable costs incurred, ~~on or before January 1, 2015,~~ by the charter city, city, county, fire protection district, or city and county for, among other things, processing and issuing fireworks permits, inspection of fireworks stands, public awareness and education campaigns regarding the safe and responsible use of safe and sane fireworks, and related fire operation and suppression efforts, as specified. The bill would specify that the pro rata portion of those costs shall be based on a percentage of the permittee's sales and use tax return for the applicable permit period, not to exceed 7% of the gross sales of the fireworks sold in the charter city, city, county, fire protection district, or city and county, except that a cost recovery ordinance or resolution in effect on or before January 1, 2015, would be authorized to supersede that provision.

Existing law provides that if dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65% of the collected moneys to the Controller for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund.

This bill would delete this provision.

Existing law imposes various fees and charges upon the management of hazardous waste, which money is deposited in the Hazardous Waste Control Account in the General Fund and is available, upon appropriation by the Legislature, for, among other things, hazardous waste management. These fees and charges are generally not applicable to hazardous wastes generated or disposed of by public agencies or as part of a public program, or to hazardous waste management facilities that are affiliated with a public agency or public program, as specified.

This bill would include within the list of hazardous wastes and facilities that are not subject to the above fees and charges (1) hazardous waste that results from the seizure or destruction of illegal fireworks by the State Fire Marshal or other authorized government fire protection agency, (2) a mobile fireworks treatment unit used by the State Fire Marshal to destroy illegal fireworks, and (3) a regional fireworks collection center established by the State Fire Marshal.

The bill would require, ~~on or before~~ *not later than* January 1, 2015, the State Fire Marshal to collect and analyze data relating to fires, damages, seizures, arrests, administrative citations, and fireworks disposal issues caused by the sale and use of both dangerous illegal fireworks and safe and sane fireworks, *as provided*.

Existing law requires the Department of Motor Vehicles to suspend the commercial license of a person transporting dangerous fireworks, as specified.

This bill would clarify that those provisions do not apply to a person with a valid license under the State Fireworks Law, as specified.

~~Existing law provides that the Department of Finance has general powers of supervision over all matters concerning the financial and business policies of the state.~~

~~This bill would require, for purposes of monitoring the budgets of the Department of Forestry and Fire Protection and the Department of Toxic Substances Control, as those budgets relate to programs regarding fireworks, the director to create a plan for modifying the budget process to increase efficiency and focus on accomplishing program goals relating~~

to fireworks. The bill would require the plan to include certain things, including ways to ensure transparency about program goals, outcomes, and funding.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13084 is added to the Government Code,~~
2 ~~to read:~~
3 ~~13084. (a) For purposes of monitoring the budgets of the~~
4 ~~Department of Forestry and Fire Protection and the Department~~
5 ~~of Toxic Substances Control, as those budgets relate to programs~~
6 ~~regarding fireworks, the director shall create a plan for modifying~~
7 ~~the budget process to increase efficiency and focus on~~
8 ~~accomplishing program goals relating to fireworks. The plan shall~~
9 ~~be developed in collaboration with the Director of the Department~~
10 ~~of Forestry and the Director of the Department of Toxic Substances~~
11 ~~Control.~~
12 ~~(b) The plan shall include all of the following:~~
13 ~~(1) A strategy to incorporate program evaluation methods into~~
14 ~~the budget process for selected activities and programs. These~~
15 ~~methods shall include zero-based budgeting, performance~~
16 ~~measures, strategic planning, audits, cost-benefit analyses, and~~
17 ~~program reviews.~~
18 ~~(2) Ways to ensure transparency about program goals, outcomes,~~
19 ~~and funding.~~
20 ~~(3) A process for collaborating with the Legislature, particularly~~
21 ~~in establishing program goals and measuring program outcomes.~~
22 ~~(4) A structure to work with local governments to develop~~
23 ~~methods to measure and evaluate performance of state-funded,~~
24 ~~locally administered programs.~~
25 ~~(5) An implementation timeline beginning with the release of~~
26 ~~the 2014-2015 Governor's Budget.~~

1 ~~SEC. 2.~~

2 ~~SECTION 1.~~ Section 12556 of the Health and Safety Code is
3 amended to read:

4 12556. (a) In addition to the obligations described in Section
5 13110.5, on or before July 1, 2008, the State Fire Marshal shall
6 identify and evaluate methods to capture more detailed data relating
7 to fires, damages, and injuries caused by both dangerous fireworks
8 and safe and sane fireworks. These evaluation methods shall
9 include a cost analysis related to capturing and reporting the data
10 and shall meet or exceed the specificity, detail, and reliability of
11 the data captured under the former California Fire Incident
12 Reporting System (CFIRS). The State Fire Marshal shall furnish
13 a copy of these evaluation methods to any interested person upon
14 request.

15 (b) ~~On or before~~ *Not later than* January 1, 2015, the State Fire
16 Marshal shall collect and analyze data relating to fires, damages,
17 seizures, arrests, administrative citations, and fireworks disposal
18 issues caused by the sale and use of both dangerous illegal
19 fireworks and safe and sane fireworks. *The State Fire Marshal*
20 *shall collect data pursuant to a methodology developed in*
21 *consultation with the State Fire Marshal's General Fireworks*
22 *Advisory Committee, which consists of representatives from local*
23 *fire service and law enforcement agencies and the fireworks*
24 *industry.*

25 ~~SEC. 3.~~

26 ~~SEC. 2.~~ Chapter 3.5 (commencing with Section 12559) is added
27 to Part 2 of Division 11 of the Health and Safety Code, to read:

28
29 CHAPTER 3.5. FIREWORKS SELL-BACK PROGRAM
30

31 12559. (a) By January 1, 2015, the State Fire Marshal shall
32 establish and have operational regional collection centers for
33 purposes of receiving safe and sane fireworks and federally
34 approved consumer fireworks seized by local authorities.

35 (b) The regional collection centers shall be located throughout
36 the state in an amount and in locations determined by the State
37 Fire Marshal.

38 12559.1. (a) Notwithstanding any other law, including Sections
39 12723 and 12726, a local authority or the State Fire Marshal may

1 transfer seized safe and sane fireworks and federally approved
2 fireworks to a regional collection center.

3 (b) Notwithstanding any other law, safe and sane or federally
4 approved fireworks transferred to a regional collection center shall
5 be deemed “hazardous material” until the State Fire Marshal and
6 a recognized third party testing entity make the determination
7 pursuant to subdivision (c).

8 (c) (1) The State Fire Marshal is authorized to permit a
9 recognized third party testing entity to enter the regional collection
10 center for purposes of making a determination with the State Fire
11 Marshal as to whether any seized fireworks are either commercially
12 viable or hazardous waste.

13 (2) Any firework deemed commercially viable may be
14 repackaged by the State Fire Marshal or the Marshal’s designee,
15 including, but not limited to, a state licensed fireworks importer
16 and exporter, a wholesaler purchasing the product pursuant to
17 subdivision (d), the recognized third party testing authority, or a
18 licensed hazardous materials or hazardous waste hauler.

19 (3) Any product deemed not commercially viable by the State
20 Fire Marshal and the third party testing authority shall be removed
21 from the regional collection center by the State Fire Marshal or
22 the State Marshal’s designee and transported and disposed of within
23 72 hours of the determination in accordance with Article 6
24 (commencing with Section 25160) of Chapter 6.5 of Division 20
25 of, Article 6.5 (commencing with Section 25167.1) of Chapter 6.5
26 of Division 20 of, this code, and Chapter 51 (commencing with
27 Section 5101) of Title 49 of, the United States Code, and any other
28 state and federal law or regulation relating to the transportation
29 and disposal of hazardous waste.

30 (d) (1) The State Fire Marshal shall authorize a state licensed
31 fireworks importer and exporter or wholesaler to purchase any
32 fireworks deemed to be commercially viable pursuant to
33 subdivision (c).

34 (2) *The State Fire Marshal may enter into an agreement with*
35 *a local authority for purposes of allocating revenue from the sale*
36 *of fireworks pursuant to paragraph (1). Notwithstanding Section*
37 *12635, revenue generated from the sale of the safe and sane or*
38 *federally approved fireworks seized by a local authority shall be*
39 *allocated by the State Fire Marshal to the seizing local authority*

1 *pursuant to the agreement. The State Fire Marshal shall allocate*
2 *no less than 65 percent of the revenues to that local authority.*

3 (e) For purposes of this section, “recognized third party testing
4 entity” means an independent third-party testing entity recognized
5 by the federal Consumer Product Safety Commission as an
6 acceptable testing entity for consumer fireworks.

7 12559.2. Any fireworks stored at a regional collection center
8 shall be subject to the requirements of Article 8 (commencing with
9 Section 989) of Chapter 6 of Title 19 of the California Code of
10 Regulations and to the requirements of the National Fire Protection
11 Association (NFPA) 1124: Code for the Manufacture,
12 Transportation, Storage, and Retail Sales of Fireworks and
13 Pyrotechnic Articles of 2013, and may be stored for a period not
14 to exceed 90 days. The regional collection centers shall not be
15 considered a storage facility for purposes of subdivision (b) of
16 Section 25123.3.

17 12559.3. (a) The State Fire Marshal shall train local fire and
18 law enforcement personnel on the requirements of this chapter.

19 (b) The State Fire Marshal shall, in consultation with relevant
20 state and local public agencies, the fireworks industry, and other
21 relevant stakeholders, develop, publish, and provide necessary
22 guidance and training to local agencies who seize, collect, transport,
23 store, and treat seized fireworks. This training and education may
24 include, but is not limited to, the following specific areas:

25 (1) Standards for the transportation, storage, and handling of
26 fireworks and pyrotechnic articles in accordance with Chapter 6
27 (commencing with Section 975) of Division 1 of Title 19 of the
28 California Code of Regulations and the National Fire Protection
29 Association (NFPA) 1124: Code for the Manufacture,
30 Transportation, Storage, and Retail Sales of Fireworks and
31 Pyrotechnic Articles of 2013.

32 (2) Recognition of explosive materials and isolation procedures
33 in accordance with Chapter 10 (commencing with Section ~~1550~~
34 ~~1550~~) of Division 1 of Title 19 of the California Code of
35 Regulations and the National Fire Protection Association (NFPA)
36 495: Explosive Materials Code of 2013.

37 (3) Recognition of commercial, consumer, and illegal fireworks
38 in accordance with Chapter 6 (commencing with Section 975) of
39 Division 1 of Title 19 of the California Code of Regulations and
40 the National Fire Protection Association (NFPA) 1124: Code for

1 the Manufacture, Transportation, Storage, and Retail Sales of
2 Fireworks and Pyrotechnic Articles of 2013.

3 (4) Environmental health standards for the management of
4 hazardous waste pursuant to Division 4.5 (commencing with
5 Section 66250) of Title 22 of the California Code of Regulations.

6 ~~SEC. 4.~~

7 *SEC. 3.* Section 12599.5 is added to the Health and Safety
8 Code, to read:

9 12599.5. (a) Notwithstanding Sections 12599 and 12672, the
10 State Fire Marshal shall issue separate one-time retail licenses
11 pursuant to this section that shall authorize the retail sale of safe
12 and sane fireworks within this state only from 9 a.m. on December
13 26 to 11:59 p.m. on January 1 of the following year, inclusive. A
14 license issued pursuant to this section shall be valid for only one
15 seven-day period and shall expire at the end of the period for which
16 it is valid. All fireworks sold pursuant to a license issued pursuant
17 to this section shall have been certified as safe and sane by the
18 State Fire Marshal on or before June 15 of the year in which the
19 validity of the license commences. No other license issued pursuant
20 to this chapter shall authorize the sale of fireworks during that
21 period.

22 (b) A retail license shall not be issued for the license period
23 authorized by this section unless the charter city, city, county, fire
24 district, or city and county having jurisdiction over the fixed
25 location where the fireworks would be sold adopts an ordinance
26 or resolution allowing that sale, and the application for that license
27 is received by the State Fire Marshal on or before December 15
28 of the year in which the validity of the license is to commence.
29 The ordinance or resolution authorizing the sale of those fireworks
30 may limit the period of use of those fireworks to specified days
31 and hours within the period during which the sale is authorized by
32 this section.

33 (c) This section shall become operative on January 1, 2015.

34 ~~SEC. 5.~~

35 *SEC. 4.* Section 12635.5 is added to the Health and Safety
36 Code, to read:

37 12635.5. (a) A charter city, city, county, fire protection district,
38 or city and county that adopts an ordinance or resolution pursuant
39 to Section 12599 or 12599.5 may, through adoption of an ordinance
40 or resolution by the governing body, require each applicant

1 receiving a permit to pay a fee to the charter city, city, county, fire
2 district, or city and county of a pro rata portion of the actual and
3 reasonable costs the charter city, city, county, fire protection
4 district, or city and county incurs ~~on or before January 1, 2015,~~
5 *that is* related to any of the following:

6 (1) Processing and issuing permits.
7 (2) Inspection of fireworks stands.
8 (3) Public education and awareness campaigns regarding the
9 safe and responsible use of safe and sane fireworks, and the dangers
10 and risks posed by the use of illegal fireworks.

11 (4) Enforcing the provisions of the code of the charter city, city,
12 county, fire protection district, or city and county with respect to
13 the sale and use of safe and sane fireworks, including extra
14 personnel time and cleanup of the fireworks trash and debris. “Extra
15 personnel time” means employee or contracted employee time that
16 the charter city, city, county, fire protection district, or city and
17 county would not otherwise incur but for the sale and use of safe
18 and sane fireworks.

19 (5) Fire operation and suppression efforts that are directly related
20 to safe and sane fireworks.

21 (b) The pro rata share of the costs shall be specified in the
22 ordinance or resolution and calculated using gross sales as shown
23 on each permittee’s sales and use tax return for the applicable
24 period. The pro rata share of costs shall not exceed 7 percent of
25 the gross sales of the fireworks sold in the charter city, city, county,
26 fire protection district, or city and county during the applicable
27 period. A cost recovery ordinance or resolution in effect on or
28 before January 1, 2015, may supersede this subdivision.

29 ~~SEC. 6.~~

30 *SEC. 5.* Section 12726 of the Health and Safety Code is
31 amended to read:

32 12726. (a) The dangerous fireworks seized pursuant to this
33 part shall be disposed of by the State Fire Marshal in the manner
34 prescribed by the State Fire Marshal at any time after the final
35 determination of proceedings under Section 12724, or upon final
36 termination of proceedings under Section 12593, whichever is
37 later. If no proceedings are commenced pursuant to Section 12724,
38 the State Fire Marshal may dispose of the fireworks after all of the
39 following requirements are satisfied:

1 (1) A random sampling of the dangerous fireworks has been
2 taken, as defined by regulations adopted by the State Fire Marshal
3 pursuant to Section 12552.

4 (2) The analysis of the random sampling has been completed.

5 (3) Photographs have been taken of the dangerous fireworks to
6 be destroyed.

7 (4) The State Fire Marshal has given written approval for the
8 destruction of the dangerous fireworks. This approval shall specify
9 the total weight of the dangerous fireworks seized, the total weight
10 of the dangerous fireworks to be destroyed, and the total weight
11 of the dangerous fireworks not to be destroyed.

12 (b) To carry out the purposes of this section, the State Fire
13 Marshal shall acquire and use statewide mobile dangerous
14 fireworks destruction units to collect and destroy seized dangerous
15 fireworks from local and state agencies.

16 ~~SEC. 7.~~

17 *SEC. 6.* Section 25174.7 of the Health and Safety Code is
18 amended to read:

19 25174.7. (a) The fees provided for in Sections 25174.1 and
20 25205.5 do not apply to any of the following:

21 (1) Hazardous wastes that result when a government agency,
22 or its contractor, removes or remedies a release of hazardous waste
23 in the state caused by another person.

24 (2) Hazardous wastes generated or disposed of by a public
25 agency operating a household hazardous waste collection facility
26 in the state pursuant to Article 10.8 (commencing with Section
27 25218), including, but not limited to, hazardous waste received
28 from conditionally exempt small quantity commercial generators,
29 authorized pursuant to Section 25218.3.

30 (3) Hazardous wastes generated or disposed of by local vector
31 control agencies which have entered into a cooperative agreement
32 pursuant to Section 116180 or by county agricultural
33 commissioners, if the hazardous wastes result from their control
34 or regulatory activities and if they comply with the requirements
35 of this chapter and regulations adopted pursuant thereto.

36 (4) Hazardous waste disposed of, or submitted for disposal or
37 treatment, by any person, which is discovered and separated from
38 solid waste as part of a load checking program.

1 (5) Hazardous waste that results from the seizure or destruction
2 of illegal fireworks by the State Fire Marshal or other authorized
3 government fire protection agency pursuant to Section 12721.

4 (b) Notwithstanding paragraph (1) of subdivision (a), any person
5 responsible for a release of hazardous waste, which has been
6 removed or remedied by a government agency, or its contractor,
7 shall pay the fee pursuant to Section 25174.1.

8 (c) Any person who acquires land for the sole purpose of
9 owner-occupied single-family residential use, and who acquires
10 that land without actual or constructive notice or knowledge that
11 there is a tank containing hazardous waste on or under that
12 property, is exempt from the fees imposed pursuant to Sections
13 25174.1 and 25205.5 in connection with the removal of the tank.

14 ~~SEC. 8:~~

15 *SEC. 7.* Section 25205.3 of the Health and Safety Code is
16 amended to read:

17 25205.3. The following facilities are exempt from the fees
18 imposed by this article:

19 (a) Any household hazardous waste collection facility operated
20 pursuant to Article 10.8 (commencing with Section 25218).

21 (b) Any facility operated by a local government agency, or by
22 any person operating a hazardous waste collection program under
23 an agreement with a public agency, which is used for wastes which
24 meet the requirements of paragraph (3) of subdivision (a) of Section
25 25174.7.

26 (c) That portion of a solid waste facility permitted pursuant to
27 Chapter 3 (commencing with Section 44001) of Part 4 of Division
28 30 of the Public Resources Code, which is used for the segregation,
29 handling, and storage of hazardous waste separated from solid
30 waste loads received by the facility, pursuant to a load checking
31 program.

32 (d) A facility used solely for the treatment, storage, disposal,
33 or recycling of hazardous waste which results when a public agency
34 or its contractor investigates, removes, or remedies a release of
35 hazardous waste caused by another person.

36 (e) (1) A mobile fireworks treatment unit used by the office of
37 the State Fire Marshal to destroy illegal fireworks pursuant to
38 Section 12721.

39 (2) A regional collection center for fireworks established
40 pursuant to Section 12559.

(f) (1) For purposes of fees assessed in any reporting period beginning July 1, 1990, or subsequently, a facility that has been issued a permit for the purpose of storing hazardous waste onsite, and whose permit has expired, if all of the following has occurred:

(A) The facility has received no waste from offsite since the permit expired.

(B) The owner or operator gave the department timely notification of intent to close the facility, pursuant to regulations adopted by the department.

(C) At least 90 days have elapsed since the owner or operator gave the department that notification.

(D) The department did not complete its review of the closure plan within 90 days of receiving the notification.

(2) This exclusion shall take effect the reporting period following the reporting period in which the facility first satisfied the requirements of paragraph (1) and did not accumulate waste onsite for more than 90 consecutive days.

~~SEC. 9.~~

SEC. 8. Section 15301 of the Vehicle Code is amended to read:

15301. (a) The Department of Motor Vehicles, in conjunction with the State Fire Marshal, shall develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

(b) A driver of a commercial motor vehicle shall not operate a commercial motor vehicle for three years if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

(c) This section shall not apply to a person who holds and is operating within the scope of a valid license as described in Section 12516 of the Health and Safety Code or valid permit as described in Section 12522 of the Health and Safety Code.

~~SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.~~

1 *SEC. 9. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

O